

## WATER SUPPLY AGREEMENT

THIS AGREEMENT, made and entered into as of the 31<sup>st</sup> day of ~~December~~, 2001, by and between ILLINOIS-AMERICAN WATER COMPANY, an Illinois corporation (hereinafter sometimes called the "Company"), and the EMBARRAS AREA WATER DISTRICT, a not for profit Illinois corporation (hereinafter collectively called the "District"),

### WITNESSETH:

WHEREAS, the District has been formed under the provisions of 805 ILCS 105/101.01, et seq. to provide central public water service to Cumberland County, Coles County, and Douglas County, and Raymond and Ayers Townships in Champaign County, as shown on Exhibit A, in which property owners presently have individual wells; and

WHEREAS, the Company is a public utility regulated by the Illinois Commerce Commission which presently owns and operates a water supply and distribution system and provides public utility water service in the Cities of Champaign and Urbana and the Villages of Bondville, Savoy and St. Joseph and to the Villages of Philo, Sidney, Tolono, Arcola, Tuscola, and the Seymour Water District and vicinity (collectively known as the "Eastern Division, Champaign District"); and

WHEREAS, the District desires the Company to provide the water supply requirements of the District's transmission main extension hereunder up to an initial aggregate 245 gpm peak demand, and up to an ultimate aggregate 735 gpm peak demand with additional repumping facilities, based on the average of any peak 15 minute period, selected by the Company, for domestic purposes, and the Company is willing to install a service connection to the District's transmission main extension hereunder and to provide a water supply to the District to satisfy the requirements of the District, under the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are accurate and are incorporated as part of this Agreement.

2. Water Supply Requirements. Subject to the terms and conditions hereinafter set forth, the Company shall sell and deliver to the District, and the District shall purchase and receive from the Company, as the District's sole water supplier, the District's domestic flow water supply requirements for the District's water distribution system connected to any facilities of the District which receive water from the Company hereunder, up to an initial aggregate 245 gpm peak demand, and up to an ultimate aggregate 735 gpm peak demand with additional repumping facilities, based on the average of any peak 15 minute period selected by the Company, at a normal operating pressure under any day demand conditions, when measured at the delivery

point, of not less than an average of 35 psi during any 15 minute period selected by the Company. In the event the District shall request a water supply in excess of such 245 gpm peak demand initially and up to the ultimate 735 gpm peak demand, the Company shall install such additional repumping facilities as it deems necessary to deliver such additional supply. Such repumping facilities shall be at the District's cost, including total construction cost, engineering and over heads. Any additional supply by the Company at the delivery point specified below beyond such aggregate 735 gpm peak demand shall be governed by the terms of this Agreement, except that any additional water supply and pumping facilities required to be installed by the Company to satisfy such additional supply shall be at the District's cost, including total construction cost, engineering and overheads. Any additional water supply by the Company at any other point of delivery other than that specified below shall be the subject of a separate agreement having terms substantially the same as the terms of this Agreement. In the event that the Company is unable to provide an additional water supply requested by the District and the District obtains an additional water supply from another source, the District shall install a backflow prevention device at the delivery point, at its cost, having a design and specifications approved by the Company. Notwithstanding, the District may obtain a water supply from another source for a distribution system owned and operated by the District which is not connected to any main of the District which receives water from the Company. However, in the event that such unconnected distribution system becomes connected to facilities of the District which receive water from the Company, then the foregoing requirements that the District take its additional water supply from the Company shall apply to such distribution system.

3. **Term and Renewal of Agreement.** This Agreement shall have a term of forty-two (42) years from its date. This Agreement shall automatically renew and be extended for additional forty-two (42) year terms, unless the District or the Company gives written notice of their intent not to renew the Agreement one (1) year prior to the expiration of its then current term.

4. **Delivery Point.** The delivery point for the water supply provided by the Company hereunder shall be at the meter to be located as determined by the Company on the Company's transmission main extension at the intersection of Douglas County Roads 1150 East and 1550 North on the boundary of Champaign and Douglas Counties, Illinois, as more specifically shown on Exhibit A attached hereto and made a part hereof.

5. **Company Installed Facilities.** To provide the District's water supply requirements under this Agreement, the Company shall design and construct the following facilities to interconnect its present system with the District's transmission main extension:

- a. The Company shall install a 12 inch main extension from its 14 inch main at the northwest corner of Champaign County Road 600 North and Champaign County Road 900 East, easterly, then southerly, a total of approximately 8 miles to the delivery point at Champaign County Road 1100 East at the southerly boundary of Champaign County, Illinois. The District shall contribute to the cost of such extension as discussed in Section 8 below.
- b. The Company shall furnish and install a 12 inch service connection and a

meter which will supply the contracted amount of water, at the delivery point, located at the termination of the Company's main extension. The Company shall pay the entire cost of such meter and meter installation.

6. **District's Main Extension.** To provide the District's water supply requirements, the District shall design and construct, at the District's cost, the following facilities to extend and interconnect the District's system with the Company's system:

- a. A transmission main beginning south of the Town of Hindsboro and continuing northerly and westerly to the Company's facilities located at the Champaign/Douglas County line at the intersection of Douglas County Roads 1550N and 1150E, being the point of delivery.
- b. An elevated water storage tank connected to the transmission system at or near Coles County Road 1880N and Coles County Road 1820E .
- c. A distribution system within its proposed service area.
- d. The necessary vault or building, with the necessary piping and valves satisfactory to the Company, for the installation of an initial 6" meter, with reasonable expansion capacity.
- e. The Company agrees to furnish the district with the results of tests, pursuant to the Company's tariffs applicable to its Champaign District from time to time in effect.

7. **Construction Requirements.** The Company shall determine the necessary size, location, design, specifications, and construction schedule of the Company's transmission main extension, service connection, and the meter. The Company shall proceed with due diligence to make its installation and the District shall proceed with due diligence to make its extension. Notwithstanding, the Company shall have no obligation to commence design or construction of its transmission main extension until the Company has obtained all necessary regulatory approvals, the District shall have paid the charge described in Paragraph 8 and the District shall have commenced construction of its extension. Subject to all of the terms and conditions of this Agreement, timely receipt of all permits, approvals, easements and materials, and timely performance of all obligations required of the other party, the Company and the District each will use their best efforts to complete their respective installations hereunder by March 31, 2002. The connection of the District's main extension to the Company's system shall be under the supervision of the Company. The District shall give the Company 30 days written notice prior to the date of connection.

8. **Contribution in Aid of Construction Charge.** The District shall pay a contribution in aid of construction ("CIAC") charge to the Company, equal to the total cost to the Company, including engineering and overheads, of the interconnection facilities comprising the

Company's transmission main extension described in Paragraph 5(a). The District shall pay the CIAC charge within ten (10) days after the later of (i) the Company's written notice to the District that it has obtained Illinois Commerce Commission approval as referred to in Paragraph 1 ~~or~~ (ii) the District's receipt of written notice from the USDA, Rural Development, that loan or grant funds as referred to in Paragraph 2 ~~are~~ are available for disbursement. Payment of the CIAC charge shall be a condition precedent to any requirement of the Company to commence construction of the interconnection facilities. The CIAC charge shall be calculated based upon the cost estimates of the Company's engineers. If, after completion of the main extension, the total actual cost is more than the total estimated cost, the District shall pay an additional CIAC charge equal to the difference within thirty (30) days of billing by the Company. If the total actual cost is less than the total estimated cost, the Company promptly shall refund the difference to the District.

9. Refunds. The District shall be entitled to refunds only as follows:

- a. Except for landowners adjacent to the Route of the main extension to be constructed by the Company under Paragraph 5 of this Agreement who grant an easement requested by the Company and under terms acceptable to the Company, in the event that a landowner adjacent to the route of the Company's main extension requests service from the Company which will be provided by means of the main extension, the Company will provide such service only in accordance with the terms of its main extension rules and agreement contained in its tariffs from time to time on file with the Illinois Commerce Commission and in effect. Under the terms of such main extension rules and agreement presently in effect, the Company will collect from such landowner the pro-rata cost of its main extension described in Paragraph 5 of this Agreement based on a per-foot basis and the actual cost of the 12 inch main. The Company shall refund the money so collected to the District. On or after ten (10) years from the date of the completion of the Company's main extension, all rights of the District to any such refunds shall terminate. For customers who grant an easement to the Company for construction of its facilities as described in Paragraph 5, such customers shall not be required to pay the servable front footage charge otherwise set forth in the Company's tariffs.
- b. The Company will make a one-time refund to the District of an amount to be determined by multiplying by one and one-half (1-1/2) the revenue received by the Company from the actual first year's billing to the District. The District shall not be entitled to any other revenue refunds for customers connecting subsequent to the first year hereunder.

10. Rates and Charges. The Company shall furnish and deliver the water supply to the District at a meter to be located at the delivery point specified above. The District shall pay for all water passing through the meter. Service shall begin on the date that water first passes through the meter to the District or thirty (30) days after completion of both the Company's transmission main extension and the District's distribution system, whichever date is first. The District shall

pay for all water and service furnished by the Company pursuant to the Company's tariffs applicable to its Champaign District from time to time in effect. Attached hereto as Exhibit B and made a part hereof is a summary of Champaign District rates in effect as of the date of this Agreement. The Company will give notice to the District of any future proposed general rate increase in the same manner as it gives notice to other customers. In the event of nonpayment of a billing in whole or in part, the Company shall have all rights provided under law, including the right to terminate service.

11. **Ownership.** All facilities constructed and furnished by the Company in accordance with this Agreement shall be and remain the sole property of the Company, as constructed. All facilities described in Paragraph 6 shall be and remain the sole property of the District, as constructed.

12. **Easements and Rights-of-Way.** This Agreement is subject to the Company and the District obtaining all necessary respective easements, permits, rights-of-way, and franchises for their respective facilities to be constructed under this Agreement within twenty-four (24) months after the date of this Agreement, and upon the Company obtaining the authority contemplated in Section 18.

13. **General Obligations of District.** In addition to its obligations under other provisions of this Agreement, the District agrees as follows:

- a. The District will use its best efforts to cause all water users along its transmission and distribution system, except in portions of Champaign County outside of Raymond and Ayers Townships, to connect to the District's system. The District shall also use its best efforts, as a prerequisite to connection of any water user connected to its facilities, to disconnect permanently from individual wells and to abandon permanently the individual wells in accordance with state requirements. Notwithstanding, water users of the District may connect to the District's system and continue to use individual wells for yard irrigation, provided that the individual wells are permanently disconnected from the users' service lines, meters, internal plumbing and appliances, and that backflow protection satisfactory to the District and the Company is provided.

14. **Extensions.** The Company reserves the right to further extend its mains and facilities from and beyond the Company's service connection installed under this Agreement; provided no such extension shall prohibit the Company from providing the requirements of the District as discussed in Paragraph 2.

15. **General Conditions of Service.** The following general provisions shall apply:

- a. The Company shall furnish water service to the District in accordance with all general orders and regulations of the Illinois Commerce Commission and

with the Company's rules, regulations, and conditions of service from time to time in effect, subject to the provisions of this Agreement.

- b. The Company shall use reasonable diligence to provide a regular and uninterrupted supply of water at the point of delivery, but shall not be liable for damages to the District for failure, suspension, diminution, or other variations beyond the control of the Company, including but not limited to acts of God or the public enemy, fire, floods, earthquakes, or other catastrophes; strikes; or failure or breakdown of supply, transmission or other facilities; or other force majeure including, but not limited to those discussed in Section 23 below not attributable to lack of reasonable diligence by the Company.
- c. The Company shall use its best efforts to provide water hereunder which, at the meter, complies with all applicable State and Federal regulations.
- d. It is further understood and agreed that the District shall have the responsibility of rechlorinating and repumping the water delivered to the District as may be necessary. The Company shall not be responsible for the quality of the water supply beyond the metering point.
- e. In the event of diminished water supply for any reason, the Company may require the District to impose water use restrictions to the same extent as the Company imposes such restrictions in its Eastern Division, Champaign District generally.

**16. Provision and Maintenance of Facilities.** The Company shall operate and maintain its transmission main extension, service connection, and meter at the delivery point. The District shall operate and maintain all facilities required to connect the service connection and the meter at the delivery point to its transmission main, including the meter vault or building with the valves and piping within the meter vault or building. Each party shall have sole responsibility for all its facilities on its side of the service connection.

**17. Illinois Commerce Commission Approval.** This Agreement is expressly subject to and conditioned upon receipt by the Company of all necessary permits and approvals from regulatory authorities, including approval of this Agreement and any other necessary approvals by the Illinois Commerce Commission. The Company shall diligently seek such approval commencing upon the start of construction of the District's transmission system. The District shall cooperate with the Company fully in all matters relating to such permits and appeals.

**18. Notices.** All notices in connection with this Agreement shall be given when mailed by certified mail, postage prepaid, to the District at: Board Chairman, Embarras Area Water District, P.O. Box 946, Charleston, Illinois 61920; and to the Company at: Manager, Eastern Division, Illinois-American Water Company, P. O. Box 9018, Champaign, Illinois 61826-9018.

19. **Assignments and Applicable Law.** This Agreement shall inure to the benefit of and be binding upon the successors, transferees and assigns of the Company and upon the successors, transferees and assigns of the District and each of them. This Agreement shall be deemed to be an Illinois contract and any matter concerning the Agreement shall be determined by Illinois law.

20. **Invalidity.** If any term or provision of this Agreement or the application thereof to any person or persons shall to any extent be invalid or unenforceable as finally determined by any court of competent jurisdiction, the remaining provision of this Agreement shall not be affected. This agreement is null and void in its entirety if the District fails to take service by December 31, 2002.

21. **Representations by the District.** The District represents and warrants to the Company that it is duly organized and existing under Illinois law, that it has taken all necessary corporate and legal action to authorize the execution, delivery, and performance on its part of this Agreement, that it has obtained all necessary voter approvals, that it is not subject to the jurisdiction of the Illinois Commerce Commission, and that the performance hereto by it will not be in contravention of any resolutions, ordinances, laws, contracts, or agreements to which it is a party or subject. The District shall deliver to the Company certified copies of all resolutions or ordinances authorizing the execution and performance by the District of this Agreement. The District shall save and hold harmless the Company and its directors, officers, employees, representatives, and agents from any and all claims, suits, and judgments, including litigation expense and attorneys' fees, relating to the authority, propriety, or appropriateness of the District executing or performing this Agreement, or the ownership and operation by the District of its water transmission and distribution system.

22. **Failure to Enforce.** The failure of any party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

23. **Causes Beyond Control.** Neither party to this Agreement shall be liable to another for failure, default, or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default, or delay in performing any of its obligations specified herein is caused by strikes or other labor problems; by forces of nature; unavoidable accident; fire; acts of the public enemy; interference by civil authorities; passage of laws; orders of the court; adoption of rules or ordinances and acts, failure to act, decisions, orders, or regulations of any government or military body or agency, office, or commission; delays in receipt of material; or any other cause, whether of similar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome. Should any of the foregoing occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement. Neither party to this Agreement shall in any event incur any liability to the other for consequential damages or other damages which may result from delays in initiating service or interruptions or other malfunctions of service.

24. **Right of First Refusal to Purchase.** In the event that the District enters into a definitive agreement to sell all or any portion of the District's water transmission and distribution system, the Company shall have a right of first refusal to purchase the property for the same price, and under the same terms and conditions. The District shall give the Company written notice of such Agreement. The Company shall exercise its right of first refusal by giving the District written notice of its election to purchase not later than sixty (60) days after receipt of such notice.

25. **Default.** In the event that the District fails to make timely payment of the Company's billings or fails to comply with the Company's rules, regulations, and conditions of service, the Company shall have all remedies provided by its tariffs and general orders and regulations of the Illinois Commerce Commission, in addition to such remedies that under the general law may be available. In addition, if the District does not comply with the requirements of Paragraph 13, the Company may terminate service to the District in accordance with the notice provisions stated in its tariffs.

26. **Complete Agreement.** This Agreement sets forth the complete understanding between the District and the Company, and any amendment hereto to be effective must be in writing.

27. **Financing.** The parties acknowledge that the construction by the District of its facilities as referenced in this Agreement is being financed in part by a loan made by, or insured by, and/or a grant from, the United States of America, acting through the USDA, Rural Development, and the obligations of the District under this Agreement are conditioned upon the approval by the USDA, Rural Development, of this Agreement, as evidenced by its signature hereto.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective officers having custody thereof the day and year first above written.

**EMBARRAS AREA WATER DISTRICT**

By: [Signature]  
Its: President

(SEAL)

ATTEST:  
[Signature]  
Its: Secretary

**ILLINOIS-AMERICAN WATER COMPANY**

By: [Signature]  
Its: Vice President

(SEAL)

[Signature]  
Asst Secretary

**THIS AGREEMENT** approved on behalf of the United States of America, acting through the USDA, Rural Development, this 21st day of September, 2001.

By: [Signature]  
Title: Director, Community + Business Program

## FIRST AMENDMENT

THIS FIRST AMENDMENT ("Amendment") is made as of the 30<sup>th</sup> day of December, 2002 by and between **Illinois-American Water Company**, an Illinois corporation (hereinafter sometimes called the "Company"), and the **Embarrass Area Water District**, a not-for-profit Illinois corporation (hereinafter collectively called the "District").

### WITNESSETH:

WHEREAS, the Company and the District entered into that certain Water Supply Agreement dated December 31, 2001 (the "Agreement"); and

WHEREAS, the Company and the District desire to enter into this Amendment for the purpose of amending the Agreement as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

1. Section 3. Section 3 of the Agreement is hereby amended such that the initial term of the Agreement shall be revised from forty-two (42) years from the date of the Agreement to forty-two years from the date of this Amendment.

2. Section 7. Section 7 of the Agreement is hereby amended such that the date by which the parties' respective installations hereunder are to be completed is extended from March 31, 2002 to December 31, 2003.

3. Section 12. Section 12 of the Agreement is hereby amended such that the date by which the parties are to obtain all necessary respective easements, permits, rights-of-way, and franchises for their respective facilities shall be extended from within twenty-four months after the Agreement to within twenty-four (24) months after this Amendment. Further, Section 12 of the Agreement is also hereby amended such that the reference to Section 18 is revised to refer to Section 17, Illinois Commerce Commission Approval.

4. Section 15. Section 15 b of the Agreement is hereby amended such that the reference to Section 24 regarding other force majeure events is revised to Section 23.

5. Section 20. Section 20 of the Agreement is hereby amended such that the date by which the Agreement is null and void in its entirety if the District fails to take service shall be revised from December 31, 2002 to December 31, 2003.

6. Effect of this Amendment. Except as herein modified, the Agreement shall remain in full force and effect in accordance with its terms and provisions.

IN WITNESS WHEREOF, the parties hereto executed this Amendment as of the date first above written.

**EMBARRASS AREA WATER  
DISTRICT**

By: Ron Bodle  
Ron Bodle, President

ATTEST:

By: Catherine Key  
Catherine Key, Secretary

**ILLINOIS-AMERICAN WATER  
COMPANY**

By: [Signature]  
Its: VP

ATTEST:

By: [Signature]  
Assistant Secretary